

Comptroller of the Currency, Treasury

§ 5.4, Nt.

(3) Two-mile radius of the site if the branch, main office, or home office is not located within an MSA.

Well capitalized means:

(1) In the case of a national bank or Federal savings association, the capital level described in 12 CFR 6.4(b)(1);

(2) In the case of a Federal branch or agency, the capital level described in 12 CFR 4.7(b)(1)(iii); or

(3) In the case of another depository institution, the capital level designated as “well capitalized” by the institution’s appropriate Federal banking agency pursuant to section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o).

Well managed means:

(1) In the case of a national bank or Federal savings association:

(i) Unless otherwise determined in writing by the OCC, the national bank or Federal savings association has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with its most recent examination, and at least a rating of 2 for management, if such a rating is given; or

(ii) In the case of a national bank or Federal savings association that has not been examined by the OCC, the existence and use of managerial resources that the OCC determines are satisfactory.

(2) In the case of a Federal branch or agency of a foreign bank:

(i) Unless determined otherwise in writing by the OCC, the Federal branch or agency has received a composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 at its most recent examination, and at least a rating of 2 for risk management, if such a rating is given; or

(ii) In the case of a Federal branch or agency that has not been examined by the OCC, the existence and use of managerial resources that the OCC determines are satisfactory.

(3) In the case of another depository institution:

(i) Unless otherwise determined in writing by the appropriate Federal banking agency, the institution has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the depository institution and, at least a rating of 2 for management, if such a rating is given; or

(ii) In the case of another depository institution that has not been examined by its appropriate Federal banking agency, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

§ 5.4 Filing required.

(a) *Filing.* A depository institution shall file an application or notice with the OCC to engage in corporate activities and transactions as described in this part.

(b) *Availability of forms.* Forms and instructions for filing are available on the OCC’s Internet Web page at www.occ.gov.

(c) *Other agency’s applications or filings.* At the request of the applicant, the OCC may accept an application or other filing submitted to another Federal agency that covers the proposed action or transaction and contains substantially the same information as required by the OCC. The OCC also may require the applicant to submit supplemental information.

(d) *Where to file.* An applicant should address a filing or other submission under this part to the appropriate OCC licensing office or appropriate OCC supervisory office, unless the OCC advises an applicant otherwise. Relevant addresses are listed on the OCC’s Internet Web page at www.occ.gov.

(e) *Incorporation of other material.* An applicant may incorporate any material contained in any other application or filing filed with the OCC or other Federal agency by reference, provided that the material is attached to the application and is current and responsive to the information requested by the OCC. The filing must clearly indicate that the information is so incorporated and include a cross-reference to the information incorporated.

(f) *Prefiling meeting.* When submitting an application to the OCC, an applicant is encouraged to contact the appropriate OCC licensing office to determine the need for a prefiling meeting. The OCC decides whether to require a prefiling meeting on a case-by-case basis. Submission of a draft business plan or other relevant information before any prefiling meeting may expedite the filing review process. Information on model business plans can be found in the Comptroller’s Licensing Manual.

EFFECTIVE DATE NOTE: At 85 FR 80435, Dec. 11, 2020, § 5.4 was amended, effective Jan. 11, 2021, by:

§5.5

- a. In paragraph (a), removing the word “shall” and adding in its place the word “must”;
 - b. In paragraph (b), removing the phrase “on the OCC’s Internet Web page”;
 - c. In paragraph (c), removing the word “applicant” wherever it appears and adding in its place the word “filer”;
 - d. In paragraph (d):
 - i. Removing the phrases “An applicant” and “an applicant” and adding in their place the phrases “A filer” and “a filer”, respectively; and
 - ii. Removing the phrase “the OCC’s Internet Web page at”;
 - e. In paragraph (e), removing the phrase “An applicant” and adding in its place the phrase “A filer”;
 - f. Revising paragraph (f); and
 - g. Adding paragraph (g).
- For the convenience of the user, the added and revised text is set forth as follows:

§5.4 Filing required.

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(f) *Prefiling meeting.* Before submitting a filing to the OCC, a potential filer is encouraged to contact the appropriate OCC licensing office to determine the need for a pre-filing meeting. The OCC decides whether to require a pre-filing meeting on a case-by-case basis. Submission of a draft business plan or other relevant information before any pre-filing meeting may expedite the filing review process. A potential filer considering a novel, complex, or unique proposal is encouraged to contact the appropriate OCC licensing office to schedule a pre-filing meeting early in the development of its proposal for the early identification and consideration of policy issues. Information on model business plans can be found in the Comptroller’s Licensing Manual.

(g) *Certification.* A filer must certify that any filing or supporting material submitted to the OCC contains no material misrepresentations or omissions. The OCC may review and verify any information filed in connection with a notice or an application. Any person responsible for any material misrepresentation or omission in a filing or supporting materials may be subject to enforcement action and other penalties, including criminal penalties provided in 18 U.S.C. 1001.

§5.5 Filing fees.

(a) *Procedure.* An applicant shall submit the appropriate filing fee, if any, in connection with its filing. Filing fees may be paid by check, money order, cashier’s check, or wire transfer. Additional information on filing fees, including where to file, can be found in the Comptroller’s Licensing Manual.

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The OCC generally does not refund the filing fees.

(b) *Fee schedule.* The OCC publishes a fee schedule in the “Notice of Comptroller of the Currency Fees,” as described in 12 CFR 8.8.

EFFECTIVE DATE NOTE: At 85 FR 80436, Dec. 11, 2020, §5.5 was amended by revising paragraph (a), effective Jan. 11, 2021. For the convenience of the user, the revised text is set forth as follows:

§5.5 Filing fees.

(a) *Procedure.* A filer must submit the appropriate filing fee, if any, in connection with its filing. Filing fees must be paid by check payable to the OCC or by other means acceptable to the OCC. Additional information on filing fees, including where to file, can be found in the Comptroller’s Licensing Manual. The OCC generally does not refund the filing fees.

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§5.6 [Reserved]

§5.7 Investigations.

(a) *Authority.* The OCC may examine or investigate and evaluate facts related to a filing to the extent necessary to reach an informed decision.

(b) *Fees.* As described in 12 CFR 8.6, the OCC may assess fees for investigations or examinations conducted under paragraph (a) of this section. The OCC publishes a fee schedule in the “Notice of Comptroller of the Currency Fees,” as described in 12 CFR 8.8.

EFFECTIVE DATE NOTE: At 85 FR 80436, Dec. 11, 2020, §5.7 was amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b), effective Jan. 11, 2021. For the convenience of the user, the added text is set forth as follows:

§5.7 Investigations.

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(b) *Fingerprints.* For certain filings, the OCC collects fingerprints for submission to the Federal Bureau of Investigation for a national criminal history background check.

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§5.8 Public notice.

(a) *In general.* An applicant shall publish a public notice of its filing in a newspaper of general circulation in the